

Exhibit 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
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5 SECURITIES AND EXCHANGE)
6 COMMISSION,)
7 Plaintiff,)
8 vs.) Case No: 2:23cv482
9 DIGITAL LICENSING, a)
10 Wyoming corporation doing)
business as Debt Box, et)
al,)
10 Defendants.)

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17 BEFORE THE HONORABLE ROBERT J. SHELBY
18 July 28, 2023

19 ZOOM STATUS CONFERENCE

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Reported by:

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1 SALT LAKE CITY, UTAH, FRIDAY, JULY 28, 2023

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3 THE COURT: Let's go ahead and call the case.

4 We'll call Case Number 2:23-CV-482, it's Securities and
5 Exchange Commission vs. Digital Licensing and others. This is
6 a sealed hearing in a sealed case with the Securities and
7 Exchange Commission. This is a hearing set on an application
8 for a temporary restraining order filed by the Commission
9 Docket Number 3. I think we also noticed probably Docket
10 Number 4, which is the ex-parte application of an appointment
11 for a receiver in the case. That's Docket Number 4. Both of
12 these motions filed the same day the Commission initiated this
13 action, July 26th, with the filing of its complaint, which is
14 Docket Number 1.

15 Mr. Welsh, let me invite you to make your
16 appearance for the Commission and along with anyone else you
17 would like to announce today.

18 MR. WELSH: Thank you, Your Honor. And thank you
19 for making the time for us in such short notice. Michael
20 Welsh on behalf of the Securities and Exchange Commission.
21 With me is my co-counsel Casey Fronk. Also in the room is
22 members of the investigative staff. They're off camera as we
23 are using our laptop. They are here if you have questions
24 about the investigation that I was unable to answer.

25 THE COURT: All right. Well, thank you. And let

1 me just say at the outset that I apologize I don't -- I'm sure
2 my staff knows, I was at a speaking engagement out of state
3 yesterday, but I know that this case was initially errantly
4 assigned to one of my colleagues. We have a protocol for
5 assigning, randomly assigning temporary restraining orders or
6 motions for temporary restraining order that get filed, and
7 for some reason our clerk's office stepped out of that
8 protocol accidentally, and the case was assigned for a moment
9 I think to Judge Nielson. I think that's reflected on the
10 record. I just wanted to make a record about why you're
11 seeing me and not Judge Nielson. I was the judge in the queue
12 that was next to receive a TRO. So I know there's been a
13 little bit of delay getting here.

14 Let me just say, in preparation for our hearing we
15 studied your complaint, your application for the TRO, your
16 motion seeking appointment of a receiver. We've reviewed a
17 lot of the material that you've submitted. And I appreciate
18 you having the investigative staff ready. I actually think
19 I'm high-centered on a legal question. So in the interest of
20 transparency, and I do this almost every time I have a
21 hearing, let me just paint the target for you so you know
22 where you're aiming.

23 The Commission relies in this case, and I think
24 I've seen this before in other emergency TRO type situations
25 with the Commission on the Unifund decision from the Second

1 Circuit for the proposition that a lower burden exists when
2 the Commission is seeking relief under Rule 65. I'll note as
3 I have I think previously, it's a 1990 decision from the
4 Second Circuit. It predates Winter. More importantly for me
5 sitting in Utah in the 10th Circuit I'm bound by 10th Circuit
6 authority.

7 Following the Winter decision, there was a decision
8 in the 10th Circuit in 2016, nobody knows how to pronounce it.
9 I call it Diné Citizens. You may have found it in your
10 research for this case. Diné was the 10th Circuit's response
11 to the Supreme Court's Winter decision. And at least as I
12 read Winter I think the Supreme Court left to the circuits
13 some breadth, some width to decide what standards each circuit
14 was going to adopt for the requirements of Rule 65. You may
15 remember, and maybe I'm jumping ahead of you here, Winter was
16 the decision where the Supreme Court said, this business of
17 some circuits reducing the burden required for a TRO or in
18 some instances saying you don't even need to establish all
19 four elements is incorrect. And the Supreme Court reversed.

20 So I'll just tell you Diné doesn't involve an
21 application for a TRO by an administrative agency. But the
22 language of Diné is clear, and I'll just cite a passage from
23 Diné, which is binding of course on me. There the
24 10th Circuit said following Winter that: Any modified test
25 which relaxes one of the prongs for preliminary relief and

1 thus deviates from the standard test is impermissible, end
2 quote.

3 There may be a district judge somewhere in the
4 10th Circuit -- well, I know there are. In fact, there's one
5 on my court. You all got an injunction I think from one of my
6 colleagues applying the Second Circuit standard from Unifund.

7 I don't think I'm permitted to do that. So let me
8 just say I think you've made a robust showing, factual showing
9 tethered to the Securities and Exchange Act, both the 33 act
10 and the 34 act. I think you've most likely satisfied your
11 obligation to show a likelihood of success on the merits. But
12 in reviewing your materials, I don't think you've addressed
13 let alone made arguments drawn to some of the other Rule 65
14 factors. I want to be sure -- I want to allow you to be heard
15 on this point, but let me tell you before you start what I've
16 done and what I'm anticipating, and then you can convince me
17 that it's crazy and we should do something different.

18 I've prepared a short oral ruling that I think lays
19 out what I think the standard is and why I think that is the
20 standard that governs, what I think is missing in the
21 application. And then with the intent that the oral ruling at
22 least denies the motion without prejudice to re-file it, and
23 what I was going to propose is that we set a time for a
24 hearing Monday morning to take up the matter again if you wish
25 to address my ruling in any way that you think might be

1 helpful or necessary.

2 But that's just my orientation coming to the bench.

3 Mr. Welsh, why is that all wrong? Or how do you think we
4 should proceed?

5 MR. WELSH: Your Honor, I appreciate you putting
6 the bulls eye in front of us. I would say if you could point
7 me to particularly which of the elements of facts that you
8 consider that you believe that we did not adequately address
9 in the hearing, we did rely on the Second Circuit opinion, but
10 I would submit that the factors are still there to the extent
11 that there are additional considerations that Your Honor
12 thought were lacking. And I'd be happy to address those.

13 THE COURT: I appreciate that. Thank you. I'll
14 say there's one other element that I think -- there's one
15 other part of 10th Circuit law that I think we hadn't
16 accounted for in this application, and that is in the
17 10th Circuit certain injunctions, requested injunctions are
18 disfavored, either mandatory injunctions which require
19 affirmative action on behalf of someone who's being enjoined
20 or certain other kinds of injunctions including injunctions
21 that change the status quo. And I think some of the relief
22 that the Commission is seeking here does both. There's
23 affirmative obligation in your request for the repatriation of
24 funds, and that's both an affirmative act that defendant would
25 have to, at least some of the defendants would have to

1 perform, and also arguably changes the status quo if the funds
2 are somewhere else at the time that you seek for relief or at
3 the time the dispute became live at least.

4 So give me just a moment. Let me turn back to the
5 merits argument. And I'll just say, I want to be completely
6 transparent. I think there's information in your application
7 from which the Court could fashion arguments about why each of
8 the four elements mandatory -- or excuse me -- required
9 elements of a Rule 65 TRO are satisfied. I just don't believe
10 that's the proper function for a court and especially in an
11 ex-parte context. So just one moment, I'll be more specific.

12 MR. WELSH: Thank you, Your Honor.

13 (Time lapse.)

14 THE COURT: So here one of the elements that I
15 think you stepped over I think in reliance on Unifund is the
16 obligation to show a risk of irreparable harm -- or
17 irreparable injury, and the other -- oh, let's see. Yeah,
18 that's right. I'm embarrassed now to tell you that I
19 didn't -- just noticing that your briefing relied on the two
20 elements that Unifund highlights, I sort of stopped after
21 that. But what I can tell you is that, you know, the four
22 elements are substantial likelihood of prevailing on the
23 merits, I think you've adequately maybe even robustly
24 addressed that. I don't know if you've shown irreparable
25 harm, though as I say I think could read that -- I could infer

1 that showing from the papers, I could craft an argument why
2 that's been made, why you've satisfied that prong.

3 I don't know if you engaged in an analysis about
4 how the threatened injury outweighs the harm that the
5 defendants may suffer. And then, of course, you're required
6 to show that the injunction that was at issue would not
7 adversely affect the public interest.

8 I don't think there was much discussion about the
9 last three elements, at least not framed in the context of
10 Rule 65. But did I miss them, Mr. Welsh?

11 MR. WELSH: No, Your Honor. I think you've
12 accurately described our pleadings. I would say that there
13 are, as you indicated there are facts in there in our
14 briefings that do address those issues. I'm happy to address
15 those now. From your proposed order, if you would prefer us
16 to brief them in full in an amended brief, we'd be happy to do
17 so.

18 But to the irreparable harm, I would submit, Your
19 Honor, that from briefings that we pointed out defendants are
20 moving assets overseas. They have said in videos that the
21 reason they are doing this is to avoid SEC jurisdiction. They
22 have dissipated funds both in closing known accounts and using
23 those funds to purchase exorbitant gifts for themselves and
24 posting videos as part of their promotion activity of those --
25 for purchasing Lamborghini, new real estate, and recently on

1 more of an evidentiary side, our investigative staff has
2 noticed they have started to take down videos, started to
3 remove evidence that we would need to rely upon in discovery.

4 And so I would submit for the irreparable harm is
5 that -- taking a step back, Your Honor, if I may. At this
6 point as you've seen probably from our TRO briefings we've
7 been covert up to this point. We are not able to access
8 additional documents through subpoena without notifying them
9 for fear that that would alert them in proceeding this way.
10 Should we not receive the TRO, we're fearful for the same
11 reasons that us serving them with a complaint and moving for
12 preliminary injunction would have that same circumstance.

13 And one particular fact about this case that makes
14 it unique, which I'm sure Your Honor has seen in other cases
15 recently is becoming more and more prevalent, is a substantial
16 amount of the funds in this case were cryptocurrency
17 transactions. Now, why that matters is in this circumstance
18 with assets being moved not only will it be difficult to trace
19 funds if they are in cold storage wallets or moved to third
20 parties or liquidated on trading pools, there's also a
21 circumstance that we may never even know that they exist if we
22 were not able to provide an accounting and determine in that
23 way. So I submit respectfully, Your Honor, that that is the
24 reason why we believe the irreparable harm is here.

25 As for affecting the public interest, this is an

1 ongoing and widespread fraudulent offering that is currently
2 in the process of being franchised out to additional offerings
3 and currently at the website for Debt Box is announcing three
4 new securities offerings, and their promoters are now offering
5 seven new securities offerings related to pharmaceutical drugs
6 for the same scheme. That is what we refer to in the
7 complaint as FAIR projects. And those are continuing to
8 spread and expand through the use of MLMs, not only in
9 America, but now they're showing it much more and more in
10 YouTube videos in India as well as Africa.

11 And so I submit the public interest there, until we
12 have a preliminary injunction hearing to maintain the status
13 quo to allow us to get additional information and then address
14 those issues, Your Honor, in a full briefing at Your Honor's
15 convenience.

16 THE COURT: Yeah. Mr. Welsh, I wonder if I've
17 not -- maybe I've been imprecise, and I apologize. I
18 appreciate what you just said. Understanding and appreciating
19 that we're here in an ex-parte posture that the defendants
20 don't have notice, they're not here, and I haven't heard
21 anything from them yet and we will in time, I'm not suggesting
22 that we move to a preliminary injunction. In my preliminary
23 comments what I meant to propose is if the TRO was re-filed
24 addressing the other factors under Rule 65 that I could take
25 it up as early as Monday.

1 I fully appreciate from the papers the urgency,
2 which I think is why I started with an apology. I think we
3 lost a day with an errant assignment, though I was out of town
4 and couldn't have heard this yesterday, but the errant
5 assignment to another court. I will move as quickly as the
6 Commission wants to move. I didn't say this in my preliminary
7 comments, but I will emphasize it now.

8 I'll just tell you every time I sign one of these
9 orders it takes my breath away. It is a profound and
10 extraordinary invocation of the power of the federal
11 judiciary. And it affects citizens in a direct way without
12 any notice or opportunity to be heard.

13 So there are the -- that's the reason, of course,
14 for all these safeguards. It's the reason you do all the work
15 and your staff does all the work that they do to prepare such
16 complete filings before you file them. This is an area of law
17 where I'm not prepared to -- to say cut corners sounds a
18 little, that's probably too strong a word.

19 But the 10th Circuit requires a clear showing of
20 entitlement to this relief because of the nature of the relief
21 that's sought. There may be judges who would be willing to
22 basically amend the TRO application based on an oral argument
23 addressing factors that weren't addressed. And I'll just say
24 I'm struggling in my own mind even as you're speaking trying
25 to figure out whether this is just frivolity to require the

1 Commission to re-file an application that identifies and
2 addresses the elements individually as opposed to just making
3 a showing in oral argument because nobody is going to be
4 responding to this paper. I mean, I think they will in time.
5 It will be limited to 10 days under the rule, and then there
6 would be an opportunity to renew. But eventually the
7 defendants will be here responding. If they're responding to
8 the brief you filed, I think they would be making righteous
9 arguments and saying I applied the wrong standard and didn't
10 adequately consider the factors.

11 What I'm going to propose what we do now actually I
12 probably need to pause and reflect on this for a few minutes
13 before I'm prepared to decide whether I'm going to give the
14 oral ruling I had in mind or whether I'm going to entertain
15 further argument on the factors that weren't addressed, at
16 least directly addressed in the papers.

17 Is there anything more you would like to say? I'm
18 going to propose we recess for 10 or 15 minutes. I'm going to
19 ask you and your team to stay where you are. I think you're
20 calling from the East Coast. I've already caught you at 5:30
21 on a Friday night. I'm sorry about that. And you may be
22 working over the weekend, and I'm sorry about that.

23 MR. WELSH: No worries. I believe we're in the
24 same building right now. We're in Salt Lake City.

25 THE COURT: You're in Salt Lake City.

1 MR. WELSH: We're in the regional office in Salt
2 Lake City, so no worries about that had.

3 THE COURT: Terrific. Had we known that we would
4 have scheduled this in person instead of by Zoom. I thought
5 we were trying to accommodate you and your staff.

6 Let me add one other thing before we recess, and
7 that is I think the application for the appointment of the
8 receiver is well supported. I think there's a basis for that.
9 If I don't rule -- if I don't enter the TRO today I'm going to
10 reserve on that motion until we get a TRO in place assuming
11 one is forthcoming. But just in the interest of transparency,
12 I don't think there's any more work to do there. The receiver
13 you proposed I think under the specific circumstances of this
14 case is probably an acceptable selection. I resist
15 out-of-state receivers even in situations like this where they
16 agree not to bill for their travel, but we still have
17 additional expenses. And of course, there's an estate that
18 we're trying to protect. But under the circumstances I think
19 you persuaded me this is the right selection for this case.

20 But is there anything more you would like to say
21 about where we are procedurally before I recess and visit with
22 my law clerks and give this some more thought?

23 MR. WELSH: No, Your Honor. I would just add the
24 fact that your point is well taken, and we do not mean in any
25 way to being cut corners in these circumstances. I take your

1 point regarding the 10th Circuit application of the law. We
2 are happy to re-file if that is your court's -- Your Honor's
3 preference.

4 I will say if it provides some comfort to Your
5 Honor we would be happy to go through each of the prongs and
6 discuss them, though I don't want to start doing this right
7 now because the fact that you already told me you don't want
8 to do it right now, I don't want to spend your time and waste
9 it. So I'm happy to wait for you to reflect and come back.
10 But I do appreciate you laying out the law and your concerns.
11 And if there's particular questions after that upon reflection
12 you want me to address, we'll be happy to do so. But I don't
13 want to sit here and pontificate on things you've already
14 foreshadowed.

15 THE COURT: Well, I may change my mind. And if I
16 do then that's the argument I hope to receive from you. I'm
17 just going to ask your patience for a few minutes.

18 To my law clerks watching this on Zoom, let me ask
19 you to come down to the courtroom and join me in a discussion
20 here.

21 Mr. Welsh, I'm going to take myself off camera and
22 mute myself. Please do the same there. And I'll be back with
23 you as quickly as I can, and we'll see how we proceed. But
24 for now at least we'll be in recess for a few minutes. Thank
25 you.

1 MR. WELSH: Very good. Thank you, Your Honor.

2 (Recess.)

3 THE COURT: Mr. Welsh, let's go back on the record.

4 Let me just continue to be as transparent as I know how to be.

5 Well, let me give you the punch line first and then work
6 backwards.

7 I think it's elevating form over function to
8 require the Commission to revise your, submit a revised or
9 amended motion tonight, say, with what are basically two pages
10 of argument just aligning the information that's already in
11 your papers with the elements that you thought you weren't
12 required to address rather than just do it in oral argument
13 now. I mean, the standard will be the same. We are in an
14 instance where because of the procedural posture and the
15 reason I wouldn't ordinarily allow it is it's unfair to the
16 responding party because without notice, you know, in their
17 papers they would respond to what you wrote in your opening
18 brief. But we don't have that problem today. We will
19 eventually, perhaps.

20 I think the transcript -- I guess what I'm saying
21 is I think the Commission has made a sufficient showing that
22 it be unfair to the Commission and to -- and potentially to
23 the investors in the case if we get to that point and we
24 establish on the merits that there's been violations and
25 there's been loss to require the Commission to lose additional

1 time providing information that could be provided on the
2 record today so long as we're meeting the standard.

3 I'm going to probably pause here for a minute and
4 just read into the record a part of my oral ruling that sets
5 out the standards that I think are required to be satisfied
6 today. And then, Mr. Welsh, I'll just listen and see where we
7 get.

8 So under Rule 65 of the Federal Rules of Civil
9 Procedure a court may issue a temporary restraining order
10 without written or oral notice to an adverse party. That's
11 Rule 65(b)(1). The parties seeking Rule 65 relief in the
12 10th Circuit must establish four elements. They are these:
13 First, a substantial likelihood of prevailing on the merits;
14 second, irreparable harm unless the injunction issues; third,
15 that the threatened injury to the movant outweighs the harm
16 that the preliminary injunction may cause the opposing party;
17 and fourth, that the injunction if issued will not adversely
18 affect the public interest. I cite the Diné Citizens Against
19 Ruining Our Environment vs. Jewell case, that 2016 decision
20 from the 10th Circuit.

21 In the same case, the 10th Circuit made clear that
22 a preliminary injunction is an extraordinary remedy, so the
23 movant's right to relief must be clear and unequivocal. And
24 as I signalled before our recess in the 10th Circuit certain
25 types of preliminary injunctions are disfavored and require

1 the movant to satisfy a heightened standard. That's a quote
2 from Colorado vs. EPA, a 10th Circuit decision from 2021.
3 That heightened standard requires a movant to make, quote, a
4 strong showing both on the likelihood of success on the merits
5 and on the balance of harms, end quote. That's from the
6 Colorado vs. EPA decision.

7 Disfavored injunctions include mandatory
8 preliminary injunctions as well as preliminary injunctions
9 that change the status quo. This also is described in
10 Colorado vs. EPA. Mandatory injunctions are those that
11 require the nonmoving party to take some affirmative action.
12 I cite here RoDa Drilling Company vs. Siegal, a 10th Circuit
13 decision from 2009. And I'm told by the 10th Circuit that an
14 injunction changes the status quo when it alters the last
15 peaceable uncontested status existing before -- between the
16 parties before the dispute developed. That's language from
17 Beltronics vs. -- excuse me -- Beltronics, USA vs. Midwest
18 Inventory Distribution, 2009.

19 So that the record is clear, and I may be wrong
20 about this some day, but I think under binding precedent in
21 the 10th Circuit in view of the language that I cited earlier
22 from Diné Citizens, I think I'm not permitted to apply the
23 relaxed standard that the Second Circuit articulated in
24 SEC vs. Unifund SAL notwithstanding that some of my colleagues
25 in this circuit and indeed in this court in recent years have

1 applied this standard in the injunction context. You all cite
2 in your papers and I'm aware of SEC vs. Traffic Monsoon,
3 Judge Parrish's decision from 2017.

4 Just so it's all clear in the same part of the
5 transcript in the event that the defendants are some day
6 reading this and trying to figure out how they wish to
7 respond, I'll just say that I've observed that Second Circuit
8 case law is not binding on the Court and neither the SEC nor
9 or research has yielded any Supreme Court or 10th Circuit case
10 law that suggests a reduced or lightened burden for the
11 Commission when seeking injunctive relief under Rule 65, which
12 brings me back to that language from Diné Citizens at
13 Page 1282 of that decision where the 10th Circuit held any
14 modified test which relaxes one of the prongs of preliminary
15 relief and thus deviates from the standard test is
16 impermissible, end quote. I acknowledged earlier and I'll say
17 again that, took case did not involve an application for
18 relief under Rule 65 by an administrative agency or the
19 Commission. But that language seems clearly and unequivocal,
20 and in the absence of the circuit saying that there is a
21 reduced or lightened standard for the Commission or
22 administrative agencies, I don't think there's a lawful basis
23 for me to deviate.

24 So here I've been carrying on at some length,
25 mainly because I want to ensure that we have a sufficient and

1 adequate record. So having said all that, let me I guess
2 further say I am satisfied that in the papers the Commission
3 has made a robust showing, a strong showing in the language of
4 the 10th Circuit for disfavored injunctions on the likelihood
5 of prevailing on the merits. So I don't think we need to
6 spend much time on that element.

7 But I'm eager to hear what else if anything you
8 would like to add, Mr. Welsh, on the remaining elements?

9 MR. WELSH: Thank you, Your Honor. At the outset,
10 I appreciate Your Honor's candor with respect to the concerns
11 regarding reaching each of the elements. This is -- the
12 decision to bring this TRO is not a decision we take lightly,
13 either. Just as we were on break I was reminded by
14 investigative staff with respect to the investigation which
15 remains ongoing that even in the last 48 hours defendants have
16 closed additional bank accounts, and I believe the number, I
17 don't have it in front of me, was around 33 bank accounts have
18 been closed.

19 And so with respect to the suffered irreparable
20 harm if the injunction is denied, second requirement,
21 investors that the SEC is here to protect would suffer
22 irreparable harm by the fact of their assets not being able to
23 be returned if this is determined on the merits to be another
24 security violation and securities fraud. As we discussed
25 earlier, the defendants have made clear that their intentions

1 are to move assets overseas and to dissipate funds.

2 This next point rolls into the third requirement.

3 To take a step back, this is not -- it's not a circumstance
4 where we're perpetrating funds from a business ongoing
5 overseas. All the defendants and/or operations remain in
6 Utah. They are moving funds into an account in Dubai, but
7 they still remain in Utah and are having chosen Utah, podcast
8 in Utah, and by their own words this is solely to avoid our
9 jurisdiction. And so weighing the harm against -- of the
10 injunction versus the harm to the defendants, we submit that
11 the harm to the public far outweighs the harm to the
12 defendants, and all that would be, is to if we were lose on
13 the merits would delay their decision to move to Abu Dhabi
14 rather than remain in the United States where they are
15 citizens, where they have bank accounts, where they continue
16 to have homes and where they continue to host podcasts from.

17 With respect to the fourth prong if an issue of
18 injunction would not adversely affect the public interest, as
19 Your Honor knows we are here on behalf of the investing public
20 of the United States to maintain integrity of the capital
21 markets. And the actions of defendants is an attack on
22 integrity of the public markets. They are using robust
23 marketing schemes to advertise a successful business operation
24 where all funds come from what is essentially equivalent of
25 the stock buyback based on their purported funds.

1 Now, we have been covert, and in a short time where
2 our investigation teams ongoing, even in that short time we
3 have had affidavits verifying multiple instances where the key
4 businesses underlying their operations are fraudulent.
5 Unfortunately we don't have because we're on video, we would
6 have liked to show you some of these YouTube videos that we
7 referenced in the declarations attached to our motion. I
8 don't know if you've had the opportunity to view them, but
9 they include circumstances in which defendants are standing in
10 front of a nonoperating oil well in Nevada saying that they've
11 hit pay dirt and they're starting to send out that thought.
12 And in another video a promoter says he just touched oil and
13 loves the smell of it and can't wait to get it off his hands.

14 These are the type of things they are preying on
15 individuals to access these funds. And based off of our
16 understanding of the technology in this circumstance, all they
17 are creating is a fake back office to create the -- to create
18 the appearance of a mining operation where all that is
19 happening is they created a smart contract, something that
20 even someone with limited intelligence as me could create in a
21 couple hours with a tutorial video. And they're distributing
22 those to these individuals claiming that they are investing in
23 a global sprawling operation that has innovative satellite
24 technology that even companies in those spaces say it's not
25 possible.

1 So bringing it back to the problems, Your Honor, if
2 issued the injunction wouldn't adversely affect the public
3 interest. I think that even allowing this to continue as it
4 is and continue to operate and expand since it is continuing
5 to grow for an additional week or two would greatly harm
6 individuals and for investors that have already put their
7 capital into this project increases the risk that they want to
8 be able to recoup any of their funds.

With that, I don't want to keep speaking over and over, but if there's any particular prong that you believe that you have more questions about I'm happy to address them. But I believe going back to the Unifund, I understand that's not the precedence in this circumstance, I would submit the position of the SEC in this circumstance is what makes it kind of different for those second two prongs is that we are here by statutory requirement to represent the public, and that's kind of what's in our mission by driven by undertaking these actions. So I understand Your Honor's position, and I'm well aware of the case law. But I point back to that as further support as to why our position here and why maintaining the status quo allowing us to obtain additional documents to get a better understanding of what assets these defendants have and what they are using those assets for would be in the public interest.

25 THE COURT: Thank you, Mr. Welsh. And I think it's

1 been the position of the Commission for sometime, and not just
2 the Securities and Exchange Commission, the Federal Trade
3 Commission regularly makes similar arguments based on out of
4 circuit authority when they come seeking emergency relief.
5 And I don't fault anyone for it. I just know that I'm bound
6 to follow the law as best I understand it in the circuit. And
7 I may be wrong. Judge Parrish thinks that there's room still
8 to grant relief under the standard you briefed.

9 But in any event, look, having carefully and
10 thoroughly considered the factual and legal support submitted
11 by the Commission in support of its request application for a
12 temporary restraining order and taking into account this
13 argument that the Commission has provided today during this
14 hearing, organizing the information that's really already in
15 the Commission's application under the four elements that the
16 Commission didn't believe they were required to satisfy, but
17 having been told I was going to require it today, I think they
18 have now addressed all four factors, I'm satisfied that the
19 Commission has not only shown its entitlement to relief under
20 Rule 65 and the four required elements of the 10th Circuit, I
21 further find that the requested injunction is a disfavored
22 injunction in the 10th Circuit by definition, but that the
23 Commission has satisfied its obligation to make a strong
24 showing on both the likelihood of success on the merits and on
25 the balance of harms prong.

4 I will grant for those reasons and the reasons
5 stated in the Commission's submission the proposed temporary
6 restraining order submitted by the Commission with a few
7 modifications. First, I'm required to place the time of the
8 TRO, not just the date, but my law clerk and I think we see a
9 few places in the draft order where it appears that the Court
10 would be ordering relief a little more broad than the relief
11 requested in the motion. So I'm going to tailor the order a
12 little bit, and make sure you look at it carefully. If you
13 think that I've done something that is incorrect you're
14 welcome to seek leave to amend the temporary restraining order
15 if you wish.

16 I'm going to include the standard language that I
17 include in a lot of my TROs, well, most of them, maybe all of
18 them, that the temporary restraining order will expire under
19 Rule 65, 10 days after issuance. But I'm going to include
20 language in the order saying that it will automatically renew
21 unless I've received prior to that time some opposition to the
22 motion by one of the affected parties.

23 I'll just tell you it's my practice and I'll tell
24 the defendants if and when they appear, I ordinarily do that
25 two or three times, but at some point it will be time to

1 convert the TRO to a preliminary injunction. But I'll try to
2 signal that in my orders that I issue.

3 I'll just say to you while I have the benefit --
4 I'm happy to entertain additional briefing on this question
5 when you file your motion for preliminary injunction assuming
6 that's worth coming at some point after you've had a chance to
7 obtain some expedited discovery. I'm open-minded that I'm
8 applying the wrong standard, and if you want to put forward
9 some law trying to convince me otherwise, I'll consider it.
10 But you know what I think about the law at least after our
11 preliminary research.

12 I'll enter the order approving the appointment of a
13 receiver. I'm just going to add just so this is on your radar
14 screen as we go forward, in my last SEC, I think it was an SEC
15 case, we had an out-of-state receiver. And at some point
16 travel became an issue. I'm just going to keep an eye on it
17 here. We may appoint a co-receiver locally at some point if
18 it seems to be appropriate and a way to meaningfully save
19 money. But one step at a time. We'll start with what you
20 proposed.

21 I find that the receiver you proposed is qualified
22 and a suitable and adequate is probably too -- he's
23 impressive. But I'm going to leave it at adequate. A
24 selection to serve as a receiver in the case and as an officer
25 of the Court.

4 MR. WELSH: Nothing comes to mind, Your Honor.

5 THE COURT: Just one moment. Let me check with the
6 smarter person in our courtroom.

7 MR. WELSH: Very good.

10 (Time lapse.)

11 THE COURT: Okay. A written order will follow.

12 Mr. Welsh, did your colleagues come up with
13 something else we should take up?

14 MR. WELSH: Just an administrative thing. Your
15 Honor, we put draft Word versions of the proposed orders on
16 the USB drive. I just want to make sure you had it. We can
17 e-mail it to your clerk if that's helpful. I just wanted to
18 double check on that.

19 THE COURT: I appreciate you asking. Thank you.

20 My clerk especially appreciates you asking. We have the
21 drive, so we have the Word documents. Thank you. And in the
22 future please feel free to e-mail them to our chambers. And
23 to help expedite this a little bit, you'll see, on the court
24 website, you'll see the names of my clerks and which clerk is
25 assigned to which case. By terminal digit Carissa is the law

1 clerk assigned to this case. If you need to contact our
2 chambers you should coordinate through her.

3 All right. Thanks for your time. Thanks for your
4 patience with us. It took us a day to get this hearing set
5 and to have it. Good luck going forward. I'm sure we'll be
6 in touch. We'll be in recess. Thank you.

7 MR. WELSH: Thank you very much.

8 (The court proceedings were concluded.)

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1 STATE OF UTAH)
2) ss.
3 COUNTY OF SALT LAKE)

4 I, KELLY BROWN HICKEN, do hereby certify that I am
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of
7 the foregoing matter on July 28, 2023, and thereat reported in
8 Stenotype all of the testimony and proceedings had, and caused
9 said notes to be transcribed into typewriting; and the
10 foregoing pages number from 3 through 28 constitute a full,
11 true and correct report of the same.

12 That I am not of kin to any of the parties and have
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this _____ day of
15 _____ 2023.

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KELLY BROWN HICKEN, CSR, RPR, RMR